



Eric W. Cole (“Cole”) appeals the denial of his motion to reinstate his appeal from an adverse determination of his claim for unemployment benefits. The reinstatement of his appeal was denied by the Chief Administrative Law Judge (“Chief ALJ”) and subsequently affirmed by the Review Board of the Indiana Department of Workforce Development (“Review Board”). The following issue is presented for our review: whether the Review Board abused its discretion by adopting the findings and conclusions of the Chief ALJ, thereby affirming the denial of the motion to reinstate Cole’s appeal.

We reverse and remand this matter for further proceedings.

### **FACTS AND PROCEDURAL HISTORY**

Cole was terminated from his employment with AVI FOODSYSTEMS, INC. (“Employer”) on August 4, 2007, and sought unemployment benefits thereafter. Employer initially objected to Cole’s receipt of unemployment benefits, alleging that Cole left his employment voluntarily without good cause. On November 7, 2007, the deputy in charge of determining eligibility for the Department of Workforce Development found that the information provided by the Employer supported the allegation that Cole voluntarily quit without good cause and determined that Cole was ineligible for benefits.

On November 16, 2007, Cole timely filed with the Department of Workforce Development his notice of appeal seeking appellate review of the initial determination of his ineligibility for benefits. In his notice of appeal, Cole claimed that he was falsely accused of a crime and was terminated from employment with the Employer. ALJ Carnes scheduled a telephonic hearing, which was continued to the afternoon of March 4, 2008. Cole had

submitted a form indicating that he would participate in the hearing as originally scheduled and did not resubmit a form specifically for the March 4, 2008 hearing. Meanwhile, Cole and Employer continued to engage in settlement negotiations regarding other aspects of his separation from employment.

In the early morning hours of March 4, 2008, Employer sent a fax to ALJ Carnes stating as follows:

This letter is to notify your office that AVI FOODSYSTEMS, INC., Claimant's former employer, hereby withdraws its objection to Claimant's application for unemployment benefits related to the above-captioned claim and/or appeal.

*Tr.* at 26. Employer also included in the fax a participation form indicating that Employer would not participate in the hearing and wished to withdraw "my appeal." *Id.* at 27. Employer also sent a copy of that letter to the Indiana Department of Workforce Development Claims Adjudication Center. Cole and Employer did not participate in the hearing scheduled that day.

ALJ Carnes had unsuccessfully attempted to contact Cole on the afternoon of the hearing using the contact information provided in the initial participation form. On March 7, 2008, ALJ Carnes issued a determination dismissing Cole's appeal for failure to participate in the scheduled hearing.

On March 12, 2008, Cole filed a motion to reinstate his appeal which included attachments explaining that Cole did not participate in the hearing because Employer no longer objected to Cole's receipt of unemployment benefits. On April 7, 2008, Chief ALJ Miller entered an order denying Cole's motion to reinstate his appeal.

On April 21, 2008, Cole filed an appeal from the denial of his motion to reinstate the appeal. On May 19, 2008, the Review Board issued its decision affirming the denial of Cole's motion to reinstate his appeal. That decision stated in relevant part as follows:

This matter is before the Review Board on a timely appeal by the adversely affected party from a decision by Administrative Law Judge Ronnie Miller. No hearing was held by the Review Board, and no additional evidence was accepted.

After examining the record, the Review Board adopts and incorporates by reference the findings of fact and conclusions of law of the Administrative Law Judge and affirms the Administrative Law Judge's decision on the 19<sup>th</sup> day of May, 2008.

*Appellant's App.* at 2. Cole now appeals.

### **DISCUSSION AND DECISION**

Indiana's Unemployment Compensation Act provides that any decision of the Review Board shall be conclusive and binding as to all questions of fact. Ind. Code § 22-4-17-12(a). When the Review Board's decision is challenged as contrary to law, a court on review is limited to a two-part inquiry into: (1) the sufficiency of the facts found to sustain the decision; and (2) the sufficiency of the evidence to sustain the findings of facts. I.C. § 22-4-17-12(f). Under this standard, courts are called upon to review (1) determinations of specific or "basic" underlying facts, (2) conclusions or inferences from those facts, sometimes called "ultimate facts," and (3) conclusions of law. *See McClain v. Review Bd. of Ind. Dep't of Workforce Dev.*, 693 N.E.2d 1314, 1317 (Ind. 1998). The Review Board's findings of basic fact are subject to a "substantial evidence" standard of review. *Id.* In this analysis, the appellate court neither reweighs the evidence nor assesses the credibility of witnesses and

considers only the evidence most favorable to the Review Board's findings. *Id.* The Review Board's conclusions as to ultimate facts involve an inference or deduction based on the findings of basic fact. *Id.* As such, they are typically reviewed to ensure that the Review Board's inference is "reasonable" or "reasonable in light of [the Review Board's] findings." *Id.* at 1318. Legal propositions are reviewed for their correctness. *Id.*

### **I. Denial of Motion to Reinstate**

Cole challenges, as contrary to law, the Review Board's denial of his motion to reinstate his appeal which was based upon the Chief ALJ's denial of Cole's motion to reinstate his appeal. The Review Board did not hold a hearing and did not receive additional evidence in reaching its determination. Instead, the Review Board adopted and incorporated by reference the findings of fact and conclusions of law of the Chief ALJ. The Chief ALJ's findings of fact and conclusions of law were as follows:

The administrative law judge [ALJ Carnes] dismissed the appeal because the Claimant, the party requesting the hearing, did not appear. The administrative law judge mailed the dismissal on Friday, March 7, 2008, and the Claimant applied for reinstatement on Wednesday, March 12, 2008. The Claimant failed to proceed with diligence on his appeals case. Since the appealing party has not shown good cause why the case should be reinstated, the request for reinstatement is **DENIED**.

*Appellant's App.* at 32 (emphasis in original).

The above findings of fact and conclusions thereon are sparse at best given the specificity required. 646 Indiana Administrative Code 3-12-6 provides as follows:

The decision of the administrative law judge shall contain conclusions of law supported by specific findings of fact. The decision shall be in writing and shall be signed by the administrative law judge. Copies shall be sent to the

parties named, their representatives or attorneys in the appeal, and to the claim holding office.

Furthermore, regarding the decision of the Review Board, 646 Indiana Administrative Code 3-12-9(a) provides as follows:

The review board shall, as promptly as possible, issue a decision with conclusions of law supported by specific findings of fact. The decision shall be in writing and shall be signed by the members of the review board who heard the appeal.

Nonetheless, we examine the findings and conclusions before us.

First, the Chief ALJ and the Review Board concluded that Cole failed to proceed with diligence on his appeals case. The findings used to support those conclusions are that: (1) Cole failed to participate in the March 4, 2008 hearing on his appeal; (2) Cole's appeal was dismissed as a result of his failure to participate; (3) the dismissal letter was mailed on Friday, March 7, 2008; and (4) Cole's application for reinstatement of his appeal was made on Wednesday, March 12, 2008.

646 Indiana Administrative Code 3-12-4(e) provides in relevant part as follows:

If a party failing to appear at an administrative law judge hearing shall apply within seven (7) days from the date of mailing of the decision or notice of disposition and show good cause why the case should be reinstated, the same shall be reinstated. No case shall be reinstated more than once.

There is no finding or evidence in the record that Cole's case previously had been reinstated.

Furthermore, it appears that Cole's motion to reinstate his appeal was filed within seven days of the date of the mailing of the dismissal notice. The facts before the Chief ALJ and the Review Board do not support the conclusion that Cole failed to proceed with diligence in his appeals case.

Second, the Chief ALJ and the Review Board concluded that Cole failed to show good cause for reinstatement of his appeal. Cole attached to his motion to reinstate his appeal documentation to support his motion to reinstate his appeal. Yet, the Chief ALJ and the Review Board found that Cole had not shown good cause for the reinstatement of his appeal.

646 Indiana Administrative Code 3-12-8(b) provides that “each hearing before the review board shall be confined to the evidence submitted before the administrative law judge unless it is an original hearing.” As a result, the Review Board had before it, ALJ Carnes’s dismissal of Cole’s appeal and Cole’s motion for reinstatement with attachments, which was submitted to Chief ALJ Miller. Cole presented to Chief ALJ Miller the Employer’s fax transmissions to ALJ Carnes and the Department of Workforce Development Claims Adjudication Center. Those transmissions supported Cole’s claim that the Employer no longer objected to Cole’s receipt of unemployment benefits. Cole offered the explanation that he did not participate in his appeal hearing because the issue of his receipt of unemployment benefits was no longer disputed.

Good cause, as it pertains to this case, is not defined in the Indiana Administrative Code, and we will not attempt to define it here. Under the facts of this case, Cole’s belief was reasonable that once the objection was removed, he did not have to participate in the telephonic appeals hearing. However, although Employer’s objection had been withdrawn, the evidence presented by Employer to support the allegation of Cole’s ineligibility for benefits remained. Accordingly, form over substance dictated that Cole needed to establish his eligibility for benefits.

We find that the facts do not support the Chief ALJ and Review Board's findings that Cole did not proceed with diligence in his appeals case, and that Cole failed to establish good cause for reinstatement of his appeal. The record before the Chief ALJ and Review Board does support the findings and conclusions that Cole mistakenly believed that the withdrawal of the Employer's objection established his eligibility for benefits, that his mistaken belief led to his failure to participate in the hearing, that his motion to reinstate the appeal was filed within the proper time period, and that the attachments to his motion supported his request for reinstatement of his appeal. While we can imagine some instances where good cause might not be found, this case is not one of those instances. When good cause for the reinstatement of an appeal is shown, "the same **shall** be reinstated." *See* 646 Ind. Admin. Code 3-12-4(e) (emphasis added).

Consequently, we remand this matter to the Review Board for reinstatement of Cole's appeal in order that he may present his evidence of eligibility for unemployment benefits.

Reversed and remanded for further proceedings consistent with this opinion.

BAKER, C.J., and NAJAM, J., concur.